

Federal Reserve System

§ 238.4

(i) Each of the savings and loan holding company's depository institutions is well capitalized; and

(ii) The savings and loan holding company is not subject to any written agreement, order, capital directive, or prompt corrective action directive issued by the Board to meet and maintain a specific capital level for any capital measure.

(2) In the case of a savings association, "well capitalized" takes the meaning provided in § 225.2(r)(2) of this chapter.

(t) *Well managed.* The term "well managed" takes the meaning provided in § 225.2(s) of this chapter except that a "satisfactory rating for management" refers to a management rating, if such rating is given, or otherwise a risk-management rating, if such rating is given.

(u) *Depository institution.* For purposes of this part, the term "depository institution" has the same meaning as in section 3(c) of Federal Deposit Insurance Act (12 U.S.C. 1813(c)).

§ 238.3 Administration.

(a) *Delegation of authority.* Designated Board members and officers and the Federal Reserve Banks are authorized by the Board to exercise various functions prescribed in this regulation, in the Board's Rules Regarding Delegation of Authority (12 CFR part 265), the Board's Rules of Procedure (12 CFR part 262), and in Board orders.

(b) *Appropriate Federal Reserve Bank.* In administering this regulation, unless a different Federal Reserve Bank is designated by the Board, the appropriate Federal Reserve Bank is as follows:

(1) For a savings and loan holding company (or a company applying to become a savings and loan holding company): the Reserve Bank of the Federal Reserve district in which the company's banking operations are principally conducted, as measured by total domestic deposits in its subsidiary savings association on the date it became (or will become) a savings and loan holding company;

(2) For an individual or company submitting a notice under subpart D of this part: The Reserve Bank of the Federal Reserve district in which the

banking operations of the savings and loan holding company to be acquired are principally conducted, as measured by total domestic deposits on the date the notice is filed.

§ 238.4 Records, reports, and inspections.

(a) *Records.* Each savings and loan holding company shall maintain such books and records as may be prescribed by the Board. Each savings and loan holding company and its non-depository affiliates shall maintain accurate and complete records of all business transactions. Such records shall support and be readily reconcilable to any regulatory reports submitted to the Board and financial reports prepared in accordance with GAAP.

The records shall be maintained in the United States and be readily accessible for examination and other supervisory purposes within 5 business days upon request by the Board, at a location acceptable to the Board.

(b) *Reports.* Each savings and loan holding company and each subsidiary thereof, other than a savings association, shall file with the Board such reports as may be required by the Board. Such reports shall be made under oath or otherwise, and shall be in such form and for such periods, as the Board may prescribe. Each report shall contain information concerning the operations of such savings and loan holding company and its subsidiaries as the Board may require.

(c) *Registration statement—(1) Filing of registration statement.* Not later than 90 days after becoming a savings and loan holding company, each savings and loan holding company shall register with the Board by furnishing information in the manner and form prescribed by the Board.

(2) *Date of registration.* The date of registration of a savings and loan holding company shall be the date on which its registration statement is received by the Board.

(3) *Extension of time for registration.* For timely and good cause shown, the Board may extend the time within which a savings and loan holding company shall register.

(d) *Release from registration.* The Board may at any time, upon its own

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motion or upon application, release a registered savings and loan holding company from any registration theretofore made by such company, if the Board shall determine that such company no longer has control of any savings association or no longer qualifies as a savings and loan holding company.

(e) *Examinations.* Each savings and loan holding company and each subsidiary thereof shall be subject to such examinations as the Board may prescribe. The Board shall, to the extent deemed feasible, use for the purposes of this section reports filed with or examinations made by other Federal agencies or the appropriate State supervisory authority.

(f) *Appointment of agent.* The Board may require any savings and loan holding company, or persons connected therewith if it is not a corporation, to execute and file a prescribed form of irrevocable appointment of agent for service of process.

§ 238.5 Audit of savings association holding companies.

(a) *General.* The Board may require, at any time, an independent audit of the financial statements of, or the application of procedures agreed upon by the Board to a savings and loan holding company, or nondepository affiliate by qualified independent public accountants when needed for any safety and soundness reason identified by the Board.

(b) *Audits required for safety and soundness purposes.* The Board requires an independent audit for safety and soundness purposes if, as of the beginning of its fiscal year, a savings and loan holding company controls savings association subsidiary(ies) with aggregate consolidated assets of \$500 million or more.

(c) *Procedures.* (1) When the Board requires an independent audit because such an audit is needed for safety and soundness purposes, the Board shall determine whether the audit was conducted and filed in a manner satisfactory to the Board.

(2) When the Board requires the application of procedures agreed upon by the Board for safety and soundness purposes, the Board shall identify the procedures to be performed. The Board

shall also determine whether the agreed upon procedures were conducted and filed in a manner satisfactory to the Board.

(d) *Qualifications for independent public accountants.* The audit shall be conducted by an independent public accountant who:

(1) Is registered or licensed to practice as a public accountant, and is in good standing, under the laws of the state or other political subdivision of the United States in which the savings association's or holding company's principal office is located;

(2) Agrees in the engagement letter to provide the Board with access to and copies of any work papers, policies, and procedures relating to the services performed;

(3)(i) Is in compliance with the American Institute of Certified Public Accountants' (AICPA) Code of Professional Conduct; and

(ii) Meets the independence requirements and interpretations of the Securities and Exchange Commission and its staff; and

(4) Has received, or is enrolled in, a peer review program that meets guidelines acceptable to the Board.

(e) *Voluntary audits.* When a savings and loan holding company or nondepository affiliate obtains an independent audit voluntarily, it must be performed by an independent public accountant who satisfies the requirements of paragraphs (d)(1), (d)(2), and (d)(3)(i) of this section.

§ 238.6 Penalties for violations.

(a) *Criminal and civil penalties.* (1) Section 10 of the HOLA provides criminal penalties for willful violation, and civil penalties for violation, by any company or individual, of HOLA or any regulation or order issued under it, or for making a false entry in any book, report, or statement of a savings and loan holding company.

(2) Civil money penalty assessments for violations of HOLA shall be made in accordance with subpart C of the Board's Rules of Practice for Hearings (12 CFR part 263, subpart C). For any willful violation of the Bank Control Act or any regulation or order issued under it, the Board may assess a civil